

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No. 5989 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgement ? NO
2. To be referred to the Reporter or not? NO

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge ? NO

GOPALBHAI RAMANBHAI SONI

Versus

STATE OF GUJARAT

Appearance:

MR AM PAREKH for Petitioners
Mr AJ DESAI, A.P.P. for respondent no.1.

CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 10/12/96

ORAL JUDGEMENT

In substance, Gopalbhai Ramanbhai Soni and his son Jayprakash by this Misc. Criminal Application under Section 482 of the Criminal Procedure Code, 1973 have moved this Court inter alia praying for quashing and setting aside the process issued by the Learned

Metropolitan Magistrate, Court no.9, Ahmedabad pursuant to the allegedly false complaint filed by Shri Mukesh Kumar Madhubhai Patel-respondent no.2 for the alleged offences punishable under Sections 323, 294,506(2) and 114 of the Indian Penal Code.

2, Perused the complaint and memo of petition.

Heard learned Advocate Mr. A.M. Parekh appearing for the petitioner and Mr. A.J Desai, learned APP appearing for the respondent-State.

3. Bearing in mind the decision of the Supreme Court rendered in the case of K.M.Methew VS State of Kerala, reported in AIR 1992, SC, 2206, and further having regard to the facts and circumstances of the case, this matter is remanded to the trial court. The reason is that the order issuing process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused.

4. At this stage, the learned advocate for the petitioner expressed an apprehension that unnecessarily the petitioner would be made to rush to the court and put into great inconvenience. With a view to meet with this situation, it will be open to the petitioner to appear before the learned Magistrate through his advocate and take up all the contentions, which have been taken up in this petition, which the learned Magistrate shall decide according to law. For this purpose, till this application is disposed of and further till the court wants the presence of the accused, he is exempted from appearing before the court.

5. In view of the aforesaid discussion, the learned Magistrate is hereby directed that he shall within fifteen days from the date of the receipt of this order fix the matter on the Board and after hearing both the sides decide the same on merits according to law, as expeditiously as possible preferably on or before 30th April, 1997, and till then, the petitioner accused shall be exempted from appearing before the Court.

Direct service is permitted.

Joshi*